

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SILVIO R. ILLESCAS,

Plaintiff,

-against-

DR. JOHN MORLEY; DR, ROBERT V.
BENTIVEGNA; ALBERT ACRISH; NICOLET
T. THOMPSON; JOHN DOE
CORRECTIONAL OFFICERS #1, #2, #3, #4;
DR. MOHAMME; DR. ODENLYL; SUSANNA
NAYSHULER; and DR. KIM,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 8/2/2023

21-CV-8473 (NSR)

SUPPLEMENTAL
ORDER OF SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff, currently incarcerated at Green Haven Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants were deliberately indifferent to his serious medical needs. The Complaint can also be liberally construed as asserting claims arising under state law. By order dated November 9, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.¹ On December 7, 2022, this Court dismissed Plaintiff's Complaint and granted Plaintiff leave to amend. (ECF No. 95.) Plaintiff did so on July 31, 2023, adding the following Defendants: Nicolet T. Thompson; John Doe Correctional Officer #1, #2, #3, #4; Dr. Mohamme; Dr. Odenlyl; Susanna Nayshuler; and Dr. Kim. (ECF No. 117.)

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(b)(1).

DISCUSSION

A. Order of Service

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendants Nicolet T. Thompson, Dr. Mohamme, Dr. Odenlyl, Susanna Nayshuler, and Dr. Kim, through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for these Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

If the Amended Complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. *Valentin* Order

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summonses be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant and obtaining service addresses. 121 F.3d 72, 76 (2d Cir. 1997). In the Amended Complaint, Plaintiff supplies sufficient information to permit the New York State Attorney General's Office to identify the Defendant John Doe Correctional Officers who transported Plaintiff to and from Vassar Brothers Medical Center. It is therefore ordered that the New York State Attorney General's Office, which is the attorney for and agent of the New York State Department of Corrections and Community Supervision, must ascertain the identity of the John Does whom Plaintiff seeks to sue here and the addresses where these Defendants may be served. The New York State Attorney General's Office must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file a Second Amended Complaint naming the John Doe Defendants. The Second Amended Complaint will replace, not supplement, the original complaint. An Amended Complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed a Second Amended Complaint, the Court will screen the Second Amended Complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendants and deliver all documents necessary to effect service to the U.S. Marshals Service.

CONCLUSION

The Clerk of Court is directed to: (1) complete the USM-285 forms with the addresses for: Nicolet T. Thompson, Dr. Mohamme, Dr. Odenlyl, Susanna Nayshuler, and Dr. Kim, and deliver all documents necessary to effect service to the U.S. Marshals Service; and (2) mail a copy of this order to the New York State Attorney General's Office at 28 Liberty Street, 16th Fl., New York, New York, 10005.

An "Amended Complaint" form is attached to this order.

The Clerk of Court is respectfully directed to mail a copy of this Order to *pro se* Plaintiff at Plaintiff's address listed on ECF and to show service on the docket.

SO ORDERED.

Dated: August 2, 2023
White Plains, New York



NELSON S. ROMÁN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Nicolet T. Thompson
Green Haven Correctional Facility
594 Rt. 216
Stormville, NY 12582-0010
2. Dr. Mohamme
Green Haven Correctional Facility
594 Rt. 216
Stormville, NY 12582-0010
3. Dr. Odenlyl
Green Haven Correctional Facility
594 Rt. 216
Stormville, NY 12582-0010
4. Dr. Kim
Green Haven Correctional Facility
594 Rt. 216
Stormville, NY 12582-0010
5. Susanna Nayshuler, Regional Health Services Administrator
DOCCS
Bldg 2., State Campus
Albany, New York 12226-2050

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV

(Include case number if one has been assigned)

-against-

**SECOND AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a *"Bivens"* action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence:

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated

Plaintiff's Signature

First Name

Middle Initial

Last Name

Prison Address

County, City

State

Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____